

**Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

High Cost Universal Service Support	:	WC Docket No. 05-337
	:	
Federal-State Joint Board on Universal Service	:	CC Docket No. 96-45
	:	

**COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO
REGARDING HIGH-COST SUPPORT FOR COMPETITIVE
ELIGIBLE TELECOMMUNICATIONS CARRIERS**

BACKGROUND AND INTRODUCTION

On January 29, 2008, the Federal Communications Commission (Commission) released a series of three Notices of Proposed Rulemaking in the above mentioned dockets. These Notices addressed proposed rules and questions regarding reforming the high-cost universal service program¹, the role and funding awarded to Competitive Eligible Communications Carriers (CETCs)², and the merits of the use of reverse auctions in the determination of the amounts of funding to be provided to ETCs³. These Notices appeared in the Federal Register on March 4th, 2007. The Public Utilities Commission

¹ *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (Joint Board Comprehensive Reform NPRM).

² *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (Identical Support Rule NPRM).

³ *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-5, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (Reverse Auctions NPRM).

of Ohio (Ohio Commission) hereby submits its comments in regard to the Notice of Proposed Rulemaking regarding high-cost universal service support provided to Competitive Eligible Telecommunications Carriers.

In its 1996 *Recommended Decision*⁴, the Joint Board recommended *inter alia* that the Commission should establish “competitive neutrality” as an additional principle upon which it shall base policies for the preservation and advancement of universal service.⁵ The Joint Board further recommended that the support payments to incumbent LECs be made “portable” to competitive ETCs.⁶ The Commission adopted the majority of the Joint Board’s recommendations.

Specifically, the Commission adopted the “competitive neutrality” principle and set forth the following general definition: “competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither favor or disfavor one technology over another.”⁷ The Commission also adopted the Joint Board’s recommendation that incumbent LEC’s support payment be “portable to other eligible telecommunications carriers.”⁸ In justifying the portability requirement (the identical support rule), both the Joint Board and the Commission expected that competitive ETCs would

⁴ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (Fed-State Jt. Bd. 1996) (First Recommended Decision).

⁵ *Id.* 101 at para. 23.

⁶ *Id.*

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, at 8801, para. 47.

⁸ *Id.* at 8832, para. 287; 8944, para. 311.

compete directly against incumbent LECs and try to take existing customers from them. However, these expectations have proven to be largely inaccurate. As the Ohio Commission noted in earlier comments⁹, including CETCs in the high-cost fund has yielded “unexpected outcomes”. Among those outcomes:

- CETCs offering supported services that were viewed by many consumers as adjuncts;
- Wireless carriers, rather than wireline CLECs, have received a majority of CETC designations, serve a majority of CETC lines, and have received a majority of CETC support and, as a result;
- Wireless CETCs not capturing lines from the ILEC to become a customer’s sole service provider, except in a small portion of households.

Due to these unexpected outcomes, the following problems have arisen:

- Instead of CETCs competing against the ILEC for a relatively fixed number of subscriber lines, certification of wireless CETCs has led to significant increases in the total number of supported lines. Because the majority of households do not view wireline and wireless services to be direct substitutes, many households subscribe to both services and receive support for multiple lines ; and
- The identical support rule fails to create efficient investment incentives for CETCs. Because a CETC’s per line support is based solely on the per line support received by the incumbent LEC, rather than its own network investment in an area, the CETC has little incentive to invest in or expand its own facilities in area with low population densities, thereby contravening the Act’s universal service goal.

Based upon the background discussed above, the Commission has

⁹ *Federal-State Joint Board on Universal Service Seeks Comment On Long Term, Comprehensive High-Cost Universal Service Reform*, Reply Comments of the Public Utilities Commission of Ohio, WC Docket No. 05-337, CC Docket No 96-45, filed July 2, 2007 at 2 (Ohio July, 2007 Reply Comments).

tentatively concluded that “the goal of the universal service will be better served if [the Commission] eliminate[s] the identical support rule and instead provide support based on competitive ETCs’ own costs.”¹⁰ The Commission further concluded “that such a change in policy is justified by the failure of the identical support rule to reward investment in communications infrastructure in rural and other high-cost areas.”

Given the “unexpected outcomes” of the existing system of CETC high-cost fund support, and the recognized need for restructuring of the Universal Service Fund’s high-cost mechanism, the Ohio Commission believes that it is an appropriate time to move forward with reform, along the lines outlined by the Notice. In addition, the Ohio Commission strongly supports the implementation of the Joint Board’s Recommended Decision¹¹ regarding the reform of the high-cost fund. The Ohio Commission’s comments are made in the context of the 2007 Recommended Decision. The applicability of the concepts discussed below to other possible redesign of the high-cost fund, or to other aspects of the Universal Service Fund is beyond the scope of these comments.

DISCUSSION

A. Basis of Support for CETCs

The Ohio Commission agrees with the Federal Communications

¹⁰ Identical Support Rule NPRM, at ¶12.

¹¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, 22 FCC Rcd 8998, (Fed.-State Jt. Bd. 2007) (2007 Recommended Decision).

Commission's tentative conclusion that "the goal of universal service will be better served if [the Commission] eliminate[s] the identical support rule and instead provide[s] support based on competitive ETCs' own costs."¹² This proposal is consistent with the goal of competitive neutrality. The FCC has defined competitive neutrality as "universal service support mechanisms and rules [that] neither unfairly advantage or disadvantage one provider over another, and neither unfairly favors or disfavors one technology over another."¹³ As stated in the Ohio July, 2007 Reply Comments "[c]ompetitive neutrality isn't as simple as 'treating every carrier identically,' it is avoiding giving one competitor or technology undue advantage in the market."¹⁴

Since competitive service providers, whether wireline or wireless may offer different sets of services and, in most instances, the competitive service providers are dependent upon the technology and infrastructure of incumbent wireline carriers, the Ohio Commission believes that in order to "neither unfairly advantage or disadvantage one provider over another and neither unfairly favor or disfavor one technology over another" different treatment in terms of cost support, and differing amounts of support are required.

B. Determination of Costs for Competitive ETCs

Currently, there are no competitive ETCs in the state of Ohio. Ohio has, to this point in time, only certified ILECs as ETCs. These Ohio ETCs

¹² Identical Support Rule NPRM, at ¶12

¹³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, para 47 (1997) (*First report and Order*).

¹⁴ Ohio July 2007 Reply Comments, page 5.

report their costs to the universal service fund administrator. However, the Ohio Commission supports the Commission's tentative conclusion to require a CETC to report its costs to the certifying authority (whether the Commission or the applicable state commission) on at least an annual basis and its line count on at least a quarterly basis. Requiring the CETC to submit its cost data to the certifying authority for approval prior to submission to the Universal Service Administrative Company is consistent with the need for accountability and balance noted in the Ohio July, 2007 Reply Comments.¹⁵

C. Geographic Disaggregation

As stated in the Ohio July, 2007 Reply Comments, the Ohio Commission believes that any ETC receiving USF High-Cost funding should be required to provide service to any and all customers who request it in a given service area.¹⁶ With this requirement in place there is, in most cases, no need for geographic disaggregation. As stated in the Ohio Commission's Comments on Reverse Auctions, Ohio supports a reverse auction mechanism. As such when the ETC makes its bid for an area, it will take into account the requirement to provide all who request and the winning ETC bidder would be presumably the most efficient provider for that service area.¹⁷

However, as noted in the Ohio Commission's Reverse Auction

¹⁵ *Id.* at pages 2-3.

¹⁶ *Id.* at page 10.

¹⁷ *Id.*

comments,¹⁸ there may be instances where there is a reasonable need to subdivide a large ILEC service territory for the purpose of establishing a successful reverse auction process.

D. Cost Reporting Requirements

In general, the Ohio Commission supports the proposed rules regarding cost reporting as being sufficiently detailed to provide confidence in the costs determined, and at the same time not overly onerous.

With regard to the question of the costs of obtaining spectrum, once that cost is allocated down to the individual supported line, it may not represent a significant cost. However, it is reasonable to include a return on this investment, except to the extent that the investment itself was supported by an infrastructure grant from the high-cost fund, as outlined in the 2007 Recommended Decision. The presence of such a grant would have to be taken into account in determining the amount on which investors should earn a supported return.

The Commission's concern regarding having an investment of this sort supported in perpetuity is a valid one. For the purpose of costing, it would be possible to amortize this investment over a reasonable period of time. In addition, spectrum is from time to time reallocated, which incurs additional costs for the wireless carriers who have purchased the rights to that

¹⁸ *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22, Comments of the Public Utilities Commission of Ohio Regarding Reverse Auctions, Filed April 17, 2007 (Ohio Commission Reverse Auction Comments) at Page 6 - Section D.

spectrum. In that regard, it is not unreasonable to use a time period in the vicinity of 25 years for such an amortization.

E. Other Issues

As was alluded to in the Notice of Proposed Rulemaking, there is some question as to whether the annual certification process as it applies to CETCs is a sufficient safeguard against the misuse of universal service support. While there are a number of possibilities with regard to establishing greater accountability, many of them are either onerous (for both the CETC and the certifying authority) or not available within the current legal framework.

A simpler and equally effective solution exists in the 2007 Recommended Decision, and is discussed at some length in the Ohio July, 2007 Reply Comments¹⁹, as well as in the Ohio Commission's comments with regard to reforming the High-Cost Fund.²⁰ The 2007 Recommended Decision proposes that a CETC requesting support for a given service (Mobility or Broadband) in a given area demonstrate how they intend to provide service throughout the service area, and commit to that provision. Particularly in the context of a reverse auction (which the Ohio Commission also supports), where cost information may not be available, these requirements are easily

¹⁹ Ohio July 2007 Reply Comments, page 8.

²⁰ *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22, Comments of the Public Utilities Commission of Ohio Regarding High Cost Universal Service Reform, Filed April 17, 2007 (Ohio Commission High Cost Comments) at Page 9 - Section E.

tracked and easily verified. More importantly, they go to the actual goal, which is achieving the universality of service that the universal Service Fund is intended to support.

CONCLUSION

While the Ohio Commission has little direct experience with CETCs there is a certain advantage of clarity in being able to comment on the situation “from a distance”. One thing that is clear is that the “identical support” rule was developed based upon assumptions that did not work out as expected; it yielded an “unexpected outcome”. The Ohio Commission believes that it is time to end the experiment, take the lessons learned, and put the high-cost fund back on a solid footing again.

The Ohio Commission believes that the 2007 Recommended Decision, including the use of a well structured reverse auction system for Mobile and Broadband services, the availability of costing methods for the POLR Fund (and as a backup to reverse auctions), and an end to the “identical support” rule are the basis for that solid footing.

The Ohio Commission would like to thank the FCC for the opportunity to submit these comments.

Respectfully submitted,

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